
By: **Delegates Rosenberg, Barkley, Hixson, Mitchell, and Rudolph**
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Assigned to: Appropriations

Committee Report: Favorable with amendments
House action: Adopted
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CHAPTER _____

1 AN ACT concerning

2 **Maryland Whistleblower Laws**

3 FOR the purpose of requiring certain employers to provide written notice of certain
4 protections and remedies to employees; prohibiting an employer from taking or
5 refusing to take certain personnel actions against employees who disclose
6 unlawful behavior, refuse to participate in unlawful behavior, or seek certain
7 remedies following certain disclosures; providing that certain protections under
8 this Act apply only if certain employees have a good faith belief that the
9 employer is engaged in unlawful activity; authorizing certain employees to
10 institute a civil action in the county where a certain violation occurred, where
11 the employee resides, or where the employer maintains its principal office in the
12 State; requiring certain employees to file a civil action under this Act within a
13 certain period after the retaliatory personnel action occurred or within a certain
14 period after the employee first became aware of the retaliatory personnel action;
15 establishing the remedies for certain employees that a court may impose;
16 providing a defense that the personnel action was based on grounds other than
17 those protected under this Act; expanding the scope of the Maryland
18 Whistleblower Law to include employees of, and State employees who are
19 applicants for positions in, all units in the Legislative ~~and Judicial Branches~~
20 Branch of State government; authorizing employees in certain personnel
21 systems who seek relief for a violation of a certain provision of law to file certain
22 grievances in a certain manner; authorizing certain employees to file a certain
23 complaint under certain circumstances; authorizing certain individuals to take
24 certain personnel action for a violation of a certain provision of law; authorizing
25 certain employees of the ~~Judicial Branch and~~ Legislative Branch to file a certain
26 civil action in a certain manner for a violation of a certain provision of law;
27 amending the remedies for certain employees that a court may impose;
28 providing for the application of this Act; and generally relating to Maryland

1 whistleblower laws.

2 BY adding to

3 Article - State Government

4 Section 10-1201 through 10-1207, inclusive, to be under the new subtitle

5 "Subtitle 12. State Contractor Employees' Whistleblower Protection"

6 Annotated Code of Maryland

7 (1999 Replacement Volume and 2002 Supplement)

8 BY repealing and reenacting, with amendments,

9 Article - State Personnel and Pensions

10 Section 5-301, 5-303, 5-307, 5-309(a)(1), and 5-311 to be under the amended

11 subtitle "Subtitle 3. Maryland Employees' Whistleblower Protection"

12 Annotated Code of Maryland

13 (1997 Replacement Volume and 2002 Supplement)

14 BY adding to

15 Article - State Personnel and Pensions

16 Section 5-301.1, 5-309.1, and 5-310.1

17 Annotated Code of Maryland

18 (1997 Replacement Volume and 2002 Supplement)

19 BY repealing

20 Article - State Personnel and Pensions

21 Section 5-309(e)

22 Annotated Code of Maryland

23 (1997 Replacement Volume and 2002 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article - State Government**

27 **SUBTITLE 12. STATE CONTRACTOR EMPLOYEES' WHISTLEBLOWER PROTECTION.**

28 10-1201.

29 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
30 INDICATED.

31 (B) (1) "EMPLOYER" MEANS A PERSON ENGAGED IN A BUSINESS, INDUSTRY,
32 PROFESSION, TRADE, OR OTHER ENTERPRISE THAT CONTRACTS WITH THE STATE TO
33 PROVIDE GOODS OR SERVICES FOR THE STATE.

34 (2) "EMPLOYER" INCLUDES AGENTS, CONTRACTORS, OR
35 SUBCONTRACTORS OF AN EMPLOYER.

1 (3) "EMPLOYER" DOES NOT INCLUDE A UNIT OF STATE GOVERNMENT
2 SUBJECT TO THE PROVISIONS OF TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL
3 AND PENSIONS ARTICLE.

4 (C) (1) "EMPLOYEE" MEANS ANY INDIVIDUAL WHO PERFORMS SERVICES
5 FOR, OR UNDER THE CONTROL AND DIRECTION OF, AN EMPLOYER FOR WAGES OR
6 OTHER REMUNERATION.

7 (2) "EMPLOYEE" DOES NOT INCLUDE AN EMPLOYEE AS DEFINED IN §
8 1-501(C)(1) OF THE HEALTH OCCUPATIONS ARTICLE.

9 (D) "SUPERVISOR" MEANS ANY INDIVIDUAL WITHIN AN EMPLOYER'S
10 ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK
11 PERFORMANCE OF AN EMPLOYEE, OR WHO HAS MANAGERIAL AUTHORITY TO TAKE
12 CORRECTIVE ACTION REGARDING THE VIOLATION OF A LAW, RULE, OR REGULATION
13 OF WHICH THE EMPLOYEE COMPLAINS.

14 10-1202.

15 AN EMPLOYER SUBJECT TO THIS SUBTITLE SHALL PROVIDE EMPLOYEES WITH
16 WRITTEN NOTICE OF THE PROTECTIONS AND REMEDIES PROVIDED BY THIS
17 SUBTITLE.

18 10-1203.

19 SUBJECT TO § 10-1204 OF THIS SUBTITLE, AN EMPLOYER MAY NOT TAKE OR
20 REFUSE TO TAKE ANY PERSONNEL ACTION AS REPRISAL AGAINST AN EMPLOYEE
21 BECAUSE THE EMPLOYEE:

22 (1) DISCLOSES INFORMATION THAT THE EMPLOYEE REASONABLY
23 BELIEVES EVIDENCES:

24 (I) AN ABUSE OF AUTHORITY, GROSS MISMANAGEMENT, OR GROSS
25 WASTE OF MONEY;

26 (II) A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR
27 SAFETY; OR

28 (III) A VIOLATION OF LAW;

29 (2) OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY,
30 OR PRACTICE IN VIOLATION OF LAW; OR

31 (3) FOLLOWING A DISCLOSURE UNDER ITEM (1) OF THIS SECTION SEEKS
32 A REMEDY PROVIDED UNDER THIS SUBTITLE.

33 10-1204.

34 THE PROTECTION PROVIDED AGAINST A VIOLATION IN § 10-1203 OF THIS
35 SUBTITLE SHALL ONLY APPLY IF THE EMPLOYEE HAS A REASONABLE GOOD FAITH

1 BELIEF THAT THE EMPLOYER HAS BEEN, OR STILL IS, ENGAGED IN AN ACTIVITY,
2 POLICY, OR PRACTICE THAT IS IN VIOLATION OF LAW.

3 10-1205.

4 (A) ANY EMPLOYEE WHO IS SUBJECT TO A PERSONNEL ACTION IN VIOLATION
5 OF § 10-1203 OF THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE COUNTY
6 WHERE:

7 (1) THE ALLEGED VIOLATION OCCURRED;

8 (2) THE EMPLOYEE RESIDES; OR

9 (3) THE EMPLOYER MAINTAINS ITS PRINCIPAL OFFICES IN THE STATE.

10 (B) THE ACTION SHALL BE BROUGHT WITHIN 1 YEAR AFTER THE ALLEGED
11 VIOLATION OF § 10-1203 OF THIS SUBTITLE OCCURRED, OR WITHIN 1 YEAR AFTER
12 THE EMPLOYEE FIRST BECAME AWARE OF THE ALLEGED VIOLATION OF § 10-1203 OF
13 THIS SUBTITLE.

14 10-1206.

15 IN ANY ACTION BROUGHT UNDER THIS SUBTITLE, A COURT MAY:

16 (1) ISSUE AN INJUNCTION TO RESTRAIN CONTINUED VIOLATION OF
17 THIS SUBTITLE;

18 (2) REINSTATE THE EMPLOYEE TO THE SAME OR AN EQUIVALENT
19 POSITION HELD BEFORE THE VIOLATION OF § 10-1203 OF THIS SUBTITLE;

20 (3) REMOVE ANY ADVERSE PERSONNEL RECORD ENTRIES BASED ON OR
21 RELATED TO THE VIOLATION OF § 10-1203 OF THIS SUBTITLE;

22 (4) REINSTATE FULL FRINGE BENEFITS AND SENIORITY RIGHTS;

23 (5) REQUIRE COMPENSATION FOR LOST WAGES, BENEFITS, AND OTHER
24 REMUNERATION;

25 (6) AWARD COSTS OF LITIGATION AND REASONABLE ATTORNEY'S FEES
26 TO THE PREVAILING COMPLAINANT; AND

27 (7) AWARD ANY OTHER APPROPRIATE DAMAGES AND RELIEF.

28 10-1207.

29 IN ANY ACTION BROUGHT UNDER THIS SUBTITLE, IT IS A DEFENSE THAT THE
30 PERSONNEL ACTION WAS BASED ON GROUNDS OTHER THAN THE EMPLOYEE'S
31 EXERCISE OF ANY RIGHTS PROTECTED UNDER THIS SUBTITLE.

1 **Article - State Personnel and Pensions**

2 Subtitle 3. Maryland EMPLOYEES' Whistleblower PROTECTION [Law in the
3 Executive Branch of State Government].

4 5-301.

5 This subtitle applies to all employees OF, and State employees who are
6 applicants for positions in, ALL UNITS IN the Executive, AND LEGISLATIVE, ~~AND~~
7 ~~JUDICIAL~~ [Branch] BRANCHES of State government, including [a] ANY unit with an
8 independent personnel system.

9 5-301.1.

10 IN THIS SUBTITLE, "COMPLAINANT" MEANS AN EMPLOYEE OF THE STATE
11 PERSONNEL MANAGEMENT SYSTEM, THE UNIVERSITY SYSTEM OF MARYLAND, OR
12 MORGAN STATE UNIVERSITY WHO IS AUTHORIZED TO FILE A COMPLAINT UNDER §
13 5-307 OF THIS SUBTITLE.

14 5-303.

15 The Secretary shall adopt regulations for processing and resolving complaints
16 brought under § 5-309 OF this subtitle.

17 5-307.

18 (a) An employee in the State Personnel Management System who seeks relief
19 for a violation of § 5-305 of this subtitle may elect to file:

20 (1) a complaint under § 5-309 of this subtitle; or

21 (2) a grievance under Title 12 of this article.

22 ~~(B) AN EMPLOYEE IN THE PERSONNEL SYSTEM OF THE JUDICIAL BRANCH~~
23 ~~WHO SEEKS RELIEF FOR A VIOLATION OF § 5-305 OF THIS SUBTITLE MAY ELECT TO~~
24 ~~FILE A GRIEVANCE UNDER THE PERSONNEL POLICIES ESTABLISHED BY THE~~
25 ~~JUDICIAL BRANCH.~~

26 ~~(C)~~ (B) AN EMPLOYEE IN THE PERSONNEL SYSTEM OF THE LEGISLATIVE
27 BRANCH WHO SEEKS RELIEF FOR A VIOLATION OF § 5-305 OF THIS SUBTITLE MAY
28 ELECT TO FILE A GRIEVANCE UNDER THE PERSONNEL POLICIES ESTABLISHED BY
29 THE LEGISLATIVE BRANCH.

30 [(b)] ~~(D)~~ (C) An employee of the University System of Maryland who is
31 eligible to file a grievance under Title 13 of the Education Article and seeks relief for
32 a violation of § 5-305 of this subtitle may elect to file:

33 (1) a complaint under § 5-309 of this subtitle; or

34 (2) a grievance under Title 13 of the Education Article.

1 [(c)] ~~(E)~~ (D) An employee of Morgan State University who is eligible to file a
 2 grievance under Title 14 of the Education Article and seeks relief for a violation of §
 3 5-305 of this subtitle may elect to file:

- 4 (1) a complaint under § 5-309 of this subtitle; or
 5 (2) a grievance under Title 14 of the Education Article.
 6 5-309.

7 (a) (1) An employee [subject to this subtitle] OF THE STATE PERSONNEL
 8 MANAGEMENT SYSTEM, THE UNIVERSITY SYSTEM OF MARYLAND, OR MORGAN
 9 STATE UNIVERSITY may file with the Secretary a complaint that alleges a violation of
 10 § 5-305 of this subtitle.

11 [(e) As a remedial action for a violation of § 5-305 of this subtitle, the Secretary
 12 or designee may:

- 13 (1) order the removal of any related detrimental information from the
 14 complainant's State personnel records;
 15 (2) require the head of the principal unit to:
 16 (i) hire, promote, or reinstate the complainant or end the
 17 complainant's suspension from employment;
 18 (ii) award the complainant back pay to the day of the violation;
 19 (iii) grant the complainant leave or seniority;
 20 (iv) take appropriate disciplinary action against any individual who
 21 caused the violation; and
 22 (v) take any other remedial action consistent with the purposes of
 23 this subtitle.]

24 5-309.1.

25 AS A REMEDIAL ACTION FOR A VIOLATION OF § 5-305 OF THIS SUBTITLE, THE
 26 SECRETARY OR DESIGNEE, ~~A DESIGNATED EMPLOYEE OF THE JUDICIAL BRANCH,~~ OR
 27 A DESIGNATED EMPLOYEE OF THE LEGISLATIVE BRANCH MAY:

- 28 (1) ORDER THE REMOVAL OF ANY RELATED DETRIMENTAL
 29 INFORMATION FROM THE EMPLOYEE'S STATE PERSONNEL RECORDS; OR
 30 (2) REQUIRE THE HEAD OF THE PRINCIPAL UNIT TO:
 31 (I) HIRE, PROMOTE, OR REINSTATE THE COMPLAINANT OR END
 32 THE EMPLOYEE'S SUSPENSION FROM EMPLOYMENT;

1 (II) AWARD THE EMPLOYEE BACK PAY TO THE DAY OF THE
2 VIOLATION;

3 (III) GRANT THE EMPLOYEE LEAVE OR SENIORITY;

4 (IV) TAKE APPROPRIATE DISCIPLINARY ACTION AGAINST ANY
5 INDIVIDUAL WHO CAUSED THE VIOLATION; AND

6 (V) TAKE ANY OTHER REMEDIAL ACTION CONSISTENT WITH THE
7 PURPOSES OF THIS SUBTITLE.

8 5-310.1.

9 AFTER EXHAUSTING ALL AVAILABLE REMEDIES UNDER THE PERSONNEL
10 POLICIES OF THE ~~JUDICIAL BRANCH~~ OR LEGISLATIVE BRANCH AS APPLICABLE, AN
11 EMPLOYEE IN THE PERSONNEL SYSTEM OF THE ~~JUDICIAL BRANCH~~ OR LEGISLATIVE
12 BRANCH WHO IS SUBJECT TO A PERSONNEL ACTION IN VIOLATION OF § 5-305 OF
13 THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE CIRCUIT COURT OF THE
14 COUNTY IN WHICH THE EMPLOYEE RESIDES OR WHERE THE VIOLATION OCCURRED.

15 5-311.

16 After reviewing a final decision under this subtitle, the court may:

17 (1) ISSUE AN INJUNCTION TO RESTRAIN CONTINUED VIOLATION OF
18 THIS SUBTITLE;

19 (2) REQUIRE THE APPROPRIATE ACTION BE TAKEN UNDER § 5-309.1 OF
20 THIS SUBTITLE;

21 (3) award costs of litigation and reasonable attorney's fees to a prevailing
22 [complainant] EMPLOYEE; and

23 (4) AWARD any other appropriate DAMAGES AND relief.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
25 construed to apply retroactively and shall be applied to and interpreted to affect any
26 personnel action taken as a reprisal against any State employee or State contractor
27 employee who discloses information that the employee reasonably believes evidences
28 an abuse of authority, gross mismanagement, gross waste of money, a substantial and
29 specific danger to public health or safety, or a violation of the law that occurred on or
30 after January 1, 2003.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
32 effect July 1, 2003.

